

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# **A Bill**

**ACT 825 OF 1995**  
**HOUSE BILL 1150**

4 **By: Representatives D. Wood, M. Wilson, and Cash**

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## **For An Act To Be Entitled**

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §11-9-404 TO  
9 CHANGE THE REQUIREMENTS FOR ESTABLISHING SELF-INSURANCE  
10 GROUPS FOR WORKERS' COMPENSATION AND TO CREATE SEPARATE  
11 SELF-INSURER GROUPS; TO DECLARE AN EMERGENCY; AND FOR  
12 OTHER PURPOSES."

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## **Subtitle**

15 "TO CHANGE THE REQUIREMENTS FOR  
16 ESTABLISHING *SELF-INSURER* GROUPS FOR  
17 WORKERS\_ COMPENSATION"

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code Annotated 11-9-404 is amended to read as  
22 follows:

23 "11-9-404. Security for compensation.

24 (a) Every employer shall secure the payment of compensation under this  
25 chapter:

26 (1) By insuring and keeping insured the payment of the  
27 compensation with any carrier authorized to write workers\_ compensation  
28 insurance;

29 (2) By furnishing satisfactory proof to the commission of his  
30 financial ability to pay compensation and receiving an authorization from the  
31 commission to pay compensation directly.

32 (A) The commission, as a condition to such authorization,  
33 may require the employer, except municipalities, counties, or the State of  
34 Arkansas or its political subdivisions, to deposit in a depository designated  
35 by the commission either an indemnity bond, irrevocable letter of credit, or  
36 securities of any kind and in an amount determined by the commission, subject

1 to such reasonable conditions as the commission may prescribe. The conditions  
2 shall include authorization to the commission, in case of default, to sell any  
3 securities sufficient to pay compensation awards or to bring suit on the bonds  
4 or the letter of credit to procure prompt payment of compensation under this  
5 chapter;

6 (B) Any employer securing compensation in accordance with  
7 the provisions of subdivision (a) (2) of this section shall be known as a  
8 self-insurer and shall be classed as a carrier of his own insurance;

9 (C) A self-insurer may have the privilege of securing  
10 portions of the payment of compensation under this chapter as he shall elect  
11 by insuring the portions with a company approved by the commission. The  
12 liability of the company shall be limited to those features and liabilities of  
13 this chapter as are expressly stated, and none other;

14 (3) *The commission, under such rules and regulations as it may*  
15 *prescribe, may permit two (2) or more employers engaged in the same type of*  
16 *business activity or pursuit to enter into agreements to pool their*  
17 *liabilities under this section for the purposes of qualifying as*  
18 *self-insurers, and each such approved group shall be classified as a*  
19 *homogeneous self-insurer. The commission, under such rules and regulations as*  
20 *it may prescribe, may permit two (2) or more employers who are members of the*  
21 *same trade or professional association to enter into agreements to pool their*  
22 *liabilities under this section for the purposes of qualifying as*  
23 *self-insurers, and each such approved group shall be classified as a common*  
24 *self-insurer. The trade or professional association shall have been in active*  
25 *existence for at least three (3) years and such associations shall have a*  
26 *constitution or by-laws and all trustees shall be participants in the common*  
27 *self-insurer program; shall have members that support the association by*  
28 *regular payment of dues on an annual, semi-annual, quarterly, or monthly*  
29 *basis; and shall be created in good faith for purposes other than that of*  
30 *creating workers' compensation common self-insurer pools. No two (2) trade or*  
31 *professional associations shall be allowed to combine or join each other and*  
32 *qualify as a common self-insurer. In order to qualify group self-insurers,*  
33 *these groups shall furnish to or satisfy the commission as to the following:*

34 (A) An application on a form prescribed by the commission  
35 by an elected board of trustees to establish a self-insurance fund to be

1 administered under the direction of the trustees. The application shall be  
2 accompanied by:

3 (i) An indemnity agreement in a form satisfactory to  
4 the commission jointly and severally binding the *groups* and each member of the  
5 *groups* to comply with the provisions of the Workers\_ Compensation Law; and

6 (ii) An individual application by each member of the  
7 *groups* applying for coverage in the fund;

8 (B) A current, audited financial statement of each member  
9 of the *groups* showing a combined net worth of all members applying for  
10 coverage of not less than one million dollars (\$1,000,000), a combined ratio  
11 of current assets to current liabilities of not less than one-to-one, and  
12 working capital of an amount establishing financial ability and liquidity  
13 sufficient to pay normal compensation claims promptly;

14 (C) (i) That the *groups deposit and maintain* with the  
15 commission acceptable securities or *have posted* a surety bond issued by a  
16 corporate surety authorized to do business in the State of Arkansas, in an  
17 amount determined by the commission, but not less than two hundred thousand  
18 dollars (\$200,000).

19 (ii) However, this subdivision shall not be  
20 applicable to municipalities, counties, or the State of Arkansas and its  
21 political subdivisions;

22 (D) That there exist ample facilities and competent  
23 personnel of good character within the *groups*, or through an approved service  
24 organization, for the *groups to service their own programs* with respect to  
25 underwriting matters, claims and adjusting, industrial safety engineering,  
26 accounting, and financial management;

27 (E) That the *groups maintain* excess insurance with an  
28 insurance company authorized to do business in this state in an amount  
29 acceptable to the commission. However, this subdivision shall not be  
30 applicable to municipalities, counties, or the State of Arkansas and its  
31 political subdivisions;

32 (F) That such financial statements, payroll records,  
33 accident experience, and compensation reports and such other reports and  
34 statements are filed at such time and in such manner as the commission shall  
35 require. However, any fund which fails or refuses to file the reports within

1 the time limits prescribed by the commission shall be subject to a civil  
2 penalty in such amount as the commission may prescribe not to exceed one  
3 hundred dollars (\$100) per infraction per day, and the failure or refusal may  
4 be considered good cause for revocation or suspension of self-insurance  
5 privileges;

6 (4) Each member of the *groups* shall file financial reports and  
7 statements at such times and in such manner as the commission may require to  
8 satisfy itself as to the continued financial stability of the member;

9 (5) In order to continue to qualify as a *homogenous self-insurer*  
10 *fund* or *common self-insurer fund*, the *groups* shall continue to meet the  
11 minimum requirements as set forth in subdivision (a)(3) of this section or as  
12 prescribed by the commission.

13 (b)(1) Except for the initial qualification of the *groups*, a certified  
14 audited financial statement shall not be required of any member of a group  
15 either for initial membership or as a condition for continued membership in  
16 the group;

17 (2) However, each financial statement filed with the commission  
18 shall be duly certified by the president and treasurer of the member in the  
19 case of a corporation, and by the owner and general partners, respectively, in  
20 the case of an individual proprietorship or partnership, to the effect that  
21 such financial statement is true and correct to the best of the knowledge and  
22 belief of the officer, individual owner, or partner and truly reflects the  
23 financial condition of the member.

24 (c) Any person who knowingly files a false or fraudulent financial  
25 statement under the provisions of this chapter shall, upon conviction, be  
26 fined not more than ten thousand dollars (\$10,000) or imprisoned not more than  
27 five (5) years or both.

28 (d) Jurisdiction for the enforcement of the provisions of this chapter  
29 or any appeal therefrom shall be in the Circuit Court of Pulaski County. The  
30 underlying purpose of this chapter is to assure the payment of benefits due  
31 employees, and this chapter shall be liberally construed to that end.

32 (e) The commission may suspend or revoke any authorization to a  
33 self-insurer for a good cause shown after a hearing at which the self-insurer  
34 shall be entitled to be heard in person or by counsel and to present evidence.  
35 No suspension or revocation shall affect the liability of any self-insurer

1 already incurred.

2 (f) Authorization to write compensation insurance under this chapter  
3 shall be given to a carrier only after the carrier has received a certificate  
4 of authority from the State Insurance Commissioner to transact the business of  
5 workers\_ compensation insurance in Arkansas and the commission has been  
6 notified in writing of the issuance of the certificate of authority."

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8 SECTION 2. Arkansas Code Annotated § 11-9-901(a) is hereby amended to  
9 read as follows:

10 "(a) The Workers' Compensation Commission is hereby authorized to  
11 recognize two separate entities formed under the Arkansas Nonprofit  
12 Corporation Act, §§ 4-28-201 - 4-28-206 and §§ 4-28-209 - 4-28-223, to  
13 function as guaranty funds for Arkansas workers' compensation self-insurers in  
14 the private sector. One (1) guaranty fund will be established for individual  
15 self-insurers and homogeneous self-insurer groups, as defined in  
16 § 11-9-404(a)(3). A separate guaranty fund will be established for common  
17 self-insurer groups, as defined in § 11-9-404(a)(3). The two (2) funds shall  
18 be created, funded, and administered completely independent from each other.  
19 The assets of the two (2) funds shall remain separate for all purposes, cannot  
20 be combined, and the assets of one (1) fund shall not be utilized to satisfy  
21 the obligations of the other fund."

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23 SECTION 3. Arkansas Code Annotated § 11-9-903 is hereby amended to read  
24 as follows:

25 "11-9-903. Liability.

26 There shall be no liability on the part of and no cause of action of any  
27 nature shall lie, whether at law or in equity, against any agent or employee  
28 of the two (2) corporations, their boards of directors, any Arkansas workers'  
29 compensation self-insurer, the Workers' Compensation Commission or any of its  
30 representatives on account of any action or inaction by any of them in the  
31 administration of the workers' compensation self-insurer guaranty funds or the  
32 performance of their duties in connection therewith."

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34 SECTION 4. Arkansas Code Annotated § 11-9-904 is hereby amended to read  
35 as follows:

1 "11-9-904. Amount of fund - Assessment - Inadequacy.

2 (a) Each corporation acting as the guaranty fund shall independently  
3 determine periodically the amount of money each Arkansas workers' compensation  
4 self-insurer should contribute to each fund in order to provide an adequate  
5 pool of money to pay workers' compensation benefits owed by an Arkansas  
6 self-insurer when such self-insurer fails to meet its workers' compensation  
7 benefits obligations.

8 (b) The Workers' Compensation Commission shall assess all workers'  
9 compensation self-insurers in an amount determined by each corporation, and  
10 the commission shall transmit the moneys collected to each corporation to be  
11 used solely to make workers' compensation benefit payments from each fund and  
12 to defray the expenses of each fund.

13 (c) At any time that a workers' compensation self-insurer guaranty fund  
14 becomes inadequate to make payments to its claimants, the balance of that fund  
15 shall be prorated equally among the claimants, and the Arkansas workers'  
16 compensation self-insurers who are members of that fund shall be assessed an  
17 amount necessary to pay the outstanding claims and expenses and replenish that  
18 fund. The inadequacy of one fund to make payments to claimants shall have no  
19 effect on the operation of the remaining fund nor shall the assets of the  
20 remaining fund be utilized in any manner to satisfy the claims of claimants to  
21 the fund suffering from the inadequacy."

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23 SECTION 5. Arkansas Code Annotated § 11-9-905 is hereby amended to read  
24 as follows:

25 "11-9-905. Report to board of directors on financial condition of  
26 self-insurer.

27 The Workers' Compensation Commission shall report to the board of  
28 directors of each corporation when the commission has reasonable cause to  
29 believe that the payment of potential claims by an Arkansas workers'  
30 compensation self-insurer is or may be jeopardized by the existing or  
31 potential financial condition of the self-insurer. The board of directors of  
32 the corporation which has the affected self-insurer as a member shall, based  
33 on such information as is reasonably available, report to the commission upon  
34 all matters germane to the solvency, liquidation, rehabilitation, or  
35 conservation of any workers' compensation self-insurer, and such reports shall

1 not be deemed public documents under the Arkansas Freedom of Information Act,  
2 § 25-19-101 et seq., or any other law."

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4 SECTION 6. Arkansas Code Annotated § 11-9-906 is hereby amended to read  
5 as follows:

6 "11-9-906. Money to be vested in corporation - Annual audit.

7 (a) Moneys collected by the Arkansas Workers' Compensation Commission  
8 and dispersed to each corporation shall be vested in the corporation and shall  
9 not be deemed state property and shall not be subject to appropriation by the  
10 General Assembly.

11 (b) Each corporation shall annually submit to an audit by an  
12 independent certified public accountant, and a copy of the audit report shall  
13 be transmitted to the Arkansas Workers' Compensation Commission."

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15 SECTION 7. Arkansas Code Annotated § 11-9-907 is hereby amended to read  
16 as follows:

17 "11-9-907. Investment - Use of funds.

18 The board of directors of each corporation shall direct the investment  
19 of moneys in each workers' compensation self-insurers guaranty fund, and all  
20 returns on the investments shall be retained in each fund. The moneys in each  
21 fund shall be used solely to compensate persons entitled to receive workers'  
22 compensation benefits from an Arkansas self-insurer which is unable to meet  
23 its workers' compensation benefits obligations and to defray the expenses of  
24 each fund."

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26 SECTION 8. Arkansas Code Annotated § 11-9-908 is hereby amended to read  
27 as follows:

28 "11-9-908. Subrogation.

29 (a) Each corporation shall have full rights of subrogation against any  
30 source of payment or reimbursement for payments by the corporation on behalf  
31 of an Arkansas workers' compensation self-insurer.

32 (b) Each corporation shall have a right of recovery through the  
33 maintenance of an action against any third party, other than a coemployee, who  
34 is in any way responsible or liable for injury or death to a covered worker."

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1 SECTION 9. Arkansas Code Annotated § 11-9-909 is hereby amended to read  
2 as follows:

3 "11-9-909. Action against self-insurer.

4 (a) Each corporation is also authorized to take all necessary action,  
5 including bringing an action at law or in equity, to seek any available relief  
6 as against any workers' compensation self-insurer, whether the self-insurer  
7 has paid all assessments levied by the Workers' Compensation Commission on  
8 behalf of the corporation.

9 (b) If a corporation is required to bring an action at law or in equity  
10 to enforce any obligations, rights, or duties as regards a workers'  
11 compensation self-insurer, the court may award reasonable attorneys' fees and  
12 costs to that corporation."

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14 SECTION 10. Arkansas Code Annotated § 11-9-910 is hereby amended to  
15 read as follows:

16 "11-9-910. Private sector participants to be members of corporation -  
17 Revocation of self-insurer's authority.

18 All private sector participants in the Arkansas workers' compensation  
19 self-insurers program may be members of one of the corporations acting as  
20 guaranty funds and the commission may revoke any such self-insurer's authority  
21 to act as a workers' compensation self-insurer if the self-insurer fails to  
22 maintain membership in the applicable corporation or fails to pay the  
23 assessments levied by the commission under this subchapter."

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25 SECTION 11. All provisions of this act of a general and permanent  
26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
27 Code Revision Commission shall incorporate the same in the Code.

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29 SECTION 12. If any provision of this act or the application thereof to  
30 any person or circumstance is held invalid, such invalidity shall not affect  
31 other provisions or applications of the act which can be given effect without  
32 the invalid provision or application, and to this end the provisions of this  
33 act are declared to be severable.

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35 SECTION 13. All laws and parts of laws in conflict with this act are





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